



1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (Amendment)

4 900 KAR 6:080. Certificate of Need emergency circumstances.

5 RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the

8 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need

9 Program and to promulgate administrative regulations as necessary for the program.

10 This administrative regulation establishes the guidelines for alleviating an emergency

11 circumstance for the orderly administration of the Certificate of Need Program.

12 Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

13 (2) "Certificate of Need Newsletter" means the monthly newsletter that is published
14 by the cabinet regarding certificate of need matters and is available on the Certificate of
15 Need Web site at <http://chfs.ky.gov/ohp/con>.

16 (3) "Days" means calendar days, unless otherwise specified.

17 (4) "Emergency circumstance" means a situation that poses an imminent threat to
18 the life, health, or safety of a citizen of the Commonwealth.

19 (5) "Office of Inspector General" means the office within the Cabinet for Health and
20 Family Services that is responsible for licensing and regulatory functions of health
21 facilities and services. (6) "Public information channels" means the Office of

1 Communication and Administrative Review in the Cabinet for Health and Family
2 Services.

3 (7) "Public notice" means notice given through:

4 (a) Public information channels; or

5 (b) The cabinet's Certificate of Need Newsletter.

6 (8) "Service Area" means county unless otherwise specified in the state health plan.

7 (9) "State Health Plan" is defined by KRS 216B.015(27) and is incorporated by
8 reference in 900 KAR 5:020.

9 Section 2. Emergency Circumstances. (1) If an emergency circumstance arises, a
10 person may proceed to alleviate the emergency without first obtaining a certificate of
11 need if:

12 (a) The person is licensed by the Office of the Inspector General or the Kentucky
13 Board of Emergency Medical Services to provide the same or similar services
14 necessary to alleviate the emergency;

15 (b) The Office of Health Policy is notified in writing within five (5) days of the
16 commencement of the provision of the service required to alleviate the emergency; and

17 (c) The Office of Health Policy acknowledges in writing that it recognizes that an
18 emergency does exist.

19 (2) The notice to the Office of Health Policy shall be accompanied by an affidavit
20 and other documentation from the person proposing to provide emergency services that
21 shall contain the following information:

22 (a) A detailed description of the emergency that shall include at least the following
23 information:

1 1. A description of health care services that will be provided to the person or
2 persons to whom the services will be provided, including proof of eligibility for the
3 service;

4 2. A list of the providers in the service area licensed to provide the services that will
5 be provided during the emergency; and

6 3. Proof that:

7 a. Other providers licensed in the service area to provide the service are aware of
8 the need for the service to be provided to the person and have refused or are unable to
9 provide the service; or

10 b. Circumstances exist under which the transfer of a patient to another provider
11 licensed in the service area to provide the service would present an unacceptable risk to
12 a patient's life, health, or safety;

13 (b) The steps taken to alleviate the emergency;

14 (c) The location or geographic service area where the emergency service is being
15 provided; and

16 (d) The expected duration of the emergency.

17 (3) The Office of Health Policy may request additional information necessary to
18 make its determination from the person proposing to provide emergency services before
19 it acknowledges that an emergency circumstance does exist.

20 (4) If the provision of service to meet the emergency circumstance is required to
21 continue beyond sixty (60) [thirty (30)] days from the date that the notice is filed with the
22 cabinet, the person providing the emergency service shall file an OHP – Form 1, Letter
23 of Intent and an application for a certificate of need for the next appropriate public notice

1 pursuant to 900 KAR 6:060. Failure to submit a Letter of Intent and an application to the
2 Office of Health Policy shall result in the rescission of the emergency acknowledgement
3 and generate notification to the Office of Inspector General.

4 (5) The person providing the emergency service may continue to alleviate the
5 emergency circumstances without a certificate of need until:

6 (a) The emergency circumstance ceases to exist; or

7 (b) The cabinet issues a final decision to approve or disapprove the application for
8 certificate of need.

9 (6) The person providing the emergency service shall notify the Office of Health
10 Policy within ten (10) days of the date the emergency circumstance ceases and
11 emergency services are no longer required.

900 KAR 6:080

REVIEWED:

 7-1-11

Carrie Banahan, Executive Director
Office of Health Policy

Date

APPROVED:

 7/13/11

Janie Miller, Secretary
Cabinet for Health and Family Services

Date

900 KAR 6:080

PUBLIC HEARING AND COMMENTS:

A public hearing on this administrative regulation shall, if requested, be held on August 22, 2011, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2011, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 6:080

Contact Person: Carrie Banahan or Chandra Venettozzi, (502) 564-9589

1. Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the guidelines for proceeding without a certificate of need application in emergency circumstances.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 194A.030, 194A.050, 216B.040(2)(a)1.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the guidelines for alleviating an emergency.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the guidelines for alleviating an emergency.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: The amendment changes the time period by which an entity alleviating an emergency must submit a Letter of Intent and file an application for a Certificate of Need to continue to provide services from 30 days to 60 days. If the emergency circumstance ceases, the person providing the emergency service must notify OHP within 10 days of the date the emergency circumstance ceases and emergency services are no longer required.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the timeframes by which an application for Certificate of Need must be filed to alleviate an emergency and requires notification to OHP if the emergency circumstances cease.

- (d) How the amendment will assist in the effective administration of the statutes: This amendment will allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.
- 3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect about 10 to 15 entities each year.
- 4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will allow 30 days additional time for entities alleviating an emergency to complete the Certificate of Need application process. It also requires notification to OHP if the emergency circumstances cease.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants alleviating an emergency will have an additional 30 days to file a Letter of Intent and a Certificate of Need Application.
- 5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No cost
 - (b) On a continuing basis: No cost
- 6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
- 7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
- 8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

9. TIERING: Is tiering applied? (Explain why or why not)
- Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 6:080 Contact Person: Carrie Banahan or Chandra Venettozzi

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 194A.030, 194A.050, 216B.040(2)(a)1.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.
 - (c) How much will it cost to administer this program for the first year? None.
 - (d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None
Other Explanation: None